



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 28, 2003

Ms. Paula A. Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2003-1282

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177225.

The Employees Retirement System of Texas ("ERS") received a request for four categories of information. You inform us that information responsive to the second category of the request has been released to the requestor, and that ERS does not have information responsive to categories three and four. You ask for a ruling with regard to information responsive to the first category of the request, which seeks "[a]ny email, fax, paper correspondence or other record related to the drafting of Senate Bill 1102, from the 1997 Legislative Session." You inform us that the requestor clarified, with regard to the first category of the request, that he wants only information pertaining to "the portion of that bill that relates to 'continued coverage' for children after COBRA coverage has expired." *See generally* Gov't Code § 552.222 (providing that governmental body may ask requestor to clarify request if what information is requested is unclear to governmental body); *see also* Open Records Decision No. 663 at 5 (1999) (discussing requests for clarification). You claim that information responsive to this request is excepted from disclosure under sections 552.101, 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, with regard to the information that you state ERS does not possess, we note that the Public Information Act does not require a governmental body to disclose information that

did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). We will next address your arguments for withholding the submitted information.

Section 552.106 excepts from disclosure drafts or working papers involved in the preparation of proposed legislation. Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body; therefore, it does not except from disclosure purely factual information. *Id.* at 2. Section 552.106 excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. *Id.* However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.*

You inform us that the submitted documents constitute drafts and working papers of an ERS staff attorney involved in the drafting of proposed legislation affecting programs administered by ERS. You state that

[the] stylistic evolution of proposed statutory language in the Requested Documents reflects the deliberative process relevant to ERS' provision of information to the Legislature prior to its enactment of portions of S.B. 1102. Moreover, Appendices "A" and "B" are not factual recitations - the drafts reflect internal analysis regarding the manner in which particular laws might be amended by the Legislature. The Requested Documents reflect ERS' legal and policy judgments and recommendations regarding the proposed legislation at issue.

Based on your representations and our review of the submitted documents, we agree that the information you have submitted as Appendices A and B constitute drafts or working papers involved in the preparation of proposed legislation, and thus, this information may be withheld from the requestor under section 552.106. *See* Open Records Decision No. 367 (1983) (statutory predecessor of section 552.106 applies to except Texas State Board of Public Accountancy's recommendations for amendments to Public Accountancy Act). As we are able to make this determination, we need not address your other claimed exceptions to disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 177225

Enc. Submitted documents

c: Mr. R. A. Dyer
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(w/o enclosures)